

Appln. No.: 10/805,016
Response dated Dec. 28, 2006
Reply to Notice of Non-Resp. Amend. of Oct. 31, 2006

REMARKS

Claims 1-31 are pending in the Application. Claim 1 is an independent claim and claims 2-24 depend there from. Claim 25 is an independent claim and claims 26-31 depend there from. Claim 25 is currently amended. Applicants respectfully traverse the rejection of claims 1-31 and requests reconsideration of claims 1-31, in light of the following remarks.

Claim Rejections under 35 U.S.C. § 112, Second Paragraph

Claims 25 and 28 stand rejected under the second paragraph of 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant respectfully traverses the rejections, however, in order to advance prosecution in the application, the Applicant has amended claim 25 as suggested by the Examiner. The Applicant believes the amendment to claim 25 has overcome the rejection under the second paragraph of 35 U.S.C. § 112 and therefore respectfully requests that the rejection be withdrawn.

Because dependent claims 28 depends, directly or indirectly, from independent claim 25, and because claim 25 has been amended as suggested by the Examiner, the Applicant asserts that the 35 U.S.C. § 112, second paragraph rejection of dependent claim 28 is now moot. The Applicant asserts that the 35 U.S.C. § 112, second paragraph rejections of claims 25 and 28 be withdrawn.

Claim Rejections under 35 U.S.C. § 102

Claims 1-3, 5-10, 13-17, 20-26, and 29 stand rejected under 35 U.S.C. § 102(b) as being unpatentable by Schulman et al (US 5,531,774).

With regard to the anticipation rejections, MPEP 2131 states that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP 2131 also states that “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Appln. No.: 10/805,016
Response dated Dec. 28, 2006
Reply to Notice of Non-Resp. Amend. of Oct. 31, 2006

Regarding amended independent claim 1 and its dependent claims (i.e., claims 2-24), claim 1 recites: “[a] system that enhances the performance of cochlear implant using a preprocessor, the system comprising: at least one signal input device; a first processor that processes signals picked up by the at least one signal input device and sends the preprocessed signal to a second processor, wherein the first processor comprises a hearing aid processor; and a second processor that processes and encodes the signal in cochlear implants.”

Applicants previously argued that the referenced art, Schulman, fails to disclose the claimed invention of claim 1, because, “for example, Schulman fails to disclose a cochlear implant system using processing associated with hearing aids. Instead, Schulman discloses a cochlear implant system that strictly performs processing associated with cochlear implants.”

The Examiner responded by stating that “Applicants’ arguments rely upon intended use statements rather than structural differences to attempt to define over Schulman et al. Cochlear implants are a form of hearing aid and thus the first processor in Schulman is a hearing aid processor.”

Applicants respectfully disagree. Hearing aids and associated processors utilize signal processing associated with hearing aids and perform hearing aid functionalities. Additionally, hearing aids and cochlear implants are different in that hearing aids are amplification devices that amplify sounds within the ear, whereas cochlear implants are devices implanted within the cochlea and simulate auditory nerves.

Therefore, Applicants respectfully submit that the Schulman reference fails to anticipate Applicants’ claim 1, for at least the reasons given above. Claim 1 is an independent claim having dependent claims 2-24. Applicants believe that independent claim 1 is allowable. Because claims 2-24 are dependent claims of claim 1, Applicants respectfully submit that claims 2-24 are, therefore, also allowable for at least the same reasons given with respect to claim 1. Applicants therefore request that the rejection of claims 1-24 under 35 U.S.C. § 102(b) be withdrawn.

Regarding amended independent claim 25 and its dependent claims (i.e., claims 26-31), claim 25 recites: “[a] method that enhances the performance of a system of a cochlear implant using a pre-processor from a hearing or audio device, the system utilizing at least one signal input device, a first processor, and a second processor, the method comprising: collecting sounds from a surrounding environment or other hearing or communication devices by the at least one

Appln. No.: 10/805,016
Response dated Dec. 28, 2006
Reply to Notice of Non-Resp. Amend. of Oct. 31, 2006

signal input devices; preprocessing the collected sounds in the first processor, wherein the first processor comprises a hearing aid processor; feeding the preprocessed sounds into the second processor; processing the sounds in the second processor; and feeding the processed sounds into a transmitter.”

Applicants previously argued that the referenced art, Schulman, fails to disclose the claimed invention of claim 25, because, “for example, Schulman fails to disclose a cochlear implant system using processing associated with hearing aids. Instead, Schulman discloses a cochlear implant system that strictly performs processing associated with cochlear implants.”

The Examiner responded by stating that “Applicants’ arguments rely upon intended use statements rather than structural differences to attempt to define over Schulman et al. Cochlear implants are a form of hearing aid and thus the first processor in Schulman is a hearing aid processor.”

Applicants respectfully disagree. Hearing aids and associated processors utilize signal processing associated with hearing aids and perform hearing aid functionalities. Additionally, hearing aids and cochlear implants are different in that hearing aids are amplification devices that amplify sounds within the ear, whereas cochlear implants are devices implanted within the cochlea and simulate auditory nerves.

Therefore, Applicants respectfully submit that the Schulman reference fails to anticipate Applicants’ claim 25, for at least the reasons given above. Claim 25 is an independent claim having dependent claims 26-31. Applicants believe that independent claim 25 is allowable. Because claims 26-31 are dependent claims of claim 25, Applicants respectfully submit that claims 26-31 are, therefore, also allowable for at least the same reasons given with respect to claim 25. Applicants therefore request that the rejection of claims 25-31 under 35 U.S.C. § 102(b) be withdrawn.

Claim Rejections under 35 U.S.C. § 103

Claims 4, 11, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schulman et al (US 5,531,774) in view of Karunasiri (US 6,195,585).

Claims 12 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schulman et al (US 5,531,774) in view of Hahn et al. (US 6,212,431).

Appln. No.: 10/805,016
Response dated Dec. 28, 2006
Reply to Notice of Non-Resp. Amend. of Oct. 31, 2006

Claim 30 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Schulman et al (US 5,531,774) in view of Lindemann et al. (US 5,479,522).

Claim 31 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Schulman et al (US 5,531,774) in view of Lindemann et al. (US 5,479,522).

Regarding claims 4, 12, 11, 18, and 19, Applicants respectfully submit that claims 4, 12, 11, 18, and 19 are claims dependent on claim 1. Rejection of claim 1 was traversed by Applicants as set hereinabove, making rejection of claims 4, 12, 11, 18, and 19 moot.

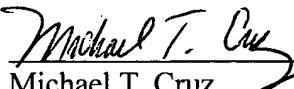
Similarly, regarding claims 30 and 31, Applicants respectfully submit that claims 30 and 31 are claims dependent on claim 25. Rejection of claim 25 was traversed by Applicants as set hereinabove, making rejection of claims 30 and 31 moot.

Based on at least the foregoing, Applicants believe that all pending claims are in condition for allowance and respectfully request that the application be allowed and passed to issuance. If the Examiner disagrees or has questions regarding this submission, Applicant invites the Examiner to telephone the undersigned at (312) 775-8000.

The Commissioner is hereby authorized to charge additional fees or credit overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Dated: December 28, 2006

Respectfully submitted,



Michael T. Cruz
Reg. No. 44,636

McAndrews, Held & Malloy, Ltd.
500 West Madison St., Ste. 3400
Chicago, IL 60661
(312) 775-8000